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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

LUXEMBOURG*

[3 August 1998]

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* For the initial report submitted by the Government of Luxembourg, see CAT/C/175/Add.29; for its consideration by the Committee, see CAT/C/SR.107 and 108 and Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/47/44), paras. 285-309.

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Introduction

1. The Grand Duchy of Luxembourg hereby submits its first supplementary report to the Committee against Torture in accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The report deals with the new provisions in national legislation which are intended to improve the system for the protection of rights to physical integrity, and to prohibit torture and other cruel, inhuman or degrading treatment or punishment.

2. Since its dialogue with the Committee on 29 April 1992, the Government of Luxembourg has established a Constitutional Court, reformed its sentencing regime, made changes in the internal administration and regulations of prisons, and conducted a review of certain provisions of its Criminal Code and Code of Pre-Trial Proceedings in order to comply with the Committee's requests.

I. INFORMATION ON NEW MEASURES RELATING TO THE IMPLEMENTATION OF THE CONVENTION

Sentencing Regime Act of 13 June 1994

3. Instead of amending the various articles to bring them into line with the new classification of custodial sentences, a blanket substitution has been made:

> "Article VII: In all legal and regulatory provisions in force when this law takes effect, the term 'imprisonment' shall be replaced by the term 'imprisonment for a term of between five and ten years'. In all legal and regulatory provisions, the terms 'hard labour' and 'detention' shall be replaced with the term 'imprisonment' and references to the provisions of the amended Act of 18 June 1879 shall be replaced with references to articles 130-1 and 132-1 of the Code of Pre-Trial Proceedings."

Grand Ducal Regulation of 18 March 1995 amending the Grand Ducal Regulation of 24 March 1989 on the internal administration and regulations of prisons

4. The text has been amended as follows:

> "(a) Article 3, new paragraphs 4-6: Placement in solitary confinement or prolongation of this measure pursuant to a decision by the Principal State Counsel may not be used to deal with a detainee who is known to be dangerous unless he is able to state his point of view.
>
> The incommunicado prisoner shall be informed in writing of the reasons for his placement in solitary confinement or the prolongation of this measure.
>
> Placement in solitary confinement is subject to mandatory review at three-monthly intervals."

"(b) Article 8: Minors committed to Luxembourg prison or the Givenich agricultural colony in accordance with articles 6 and 24 of the Youth Protection Act shall be subject to an appropriate regime.

Minors committed to Luxembourg prison in accordance with article 26 of the same Act shall be placed in solitary confinement as defined in article 5 of this regulation."

"(c) Article 29: The chief medical officer shall direct the work of the medical service.

When he is absent or unable to perform his duties, or when the situation so require, he may be replaced or assisted by a physician approved by the Principal State Counsel.

The national rescue service shall be requested to provide assistance in emergencies."

"(d) Article 52, paragraph 1: To subject detainees to torture or cruel, inhuman or degrading punishment or treatment"; (paragraphs 1-17 of the article are renumbered 2-18).

"(e) Article 63, paragraph 3: The formulation of their working arrangements and leave planning as provided for in chapter 9 of the general civil service regulations is the responsibility of the prison governor."

"(f) Article 197, paragraph 11: Placement in solitary confinement for a maximum of six months. If the offence is repeated within three years, the disciplinary penalty may be set at 12 months."

"(g) Article 199: Placement in a punishment cell entails deprivation of work, radio, canteen access, leisure facilities and communal activities.

Placement in a punishment cell further entails deprivation of correspondence with the outside and discontinuation of visits subject to the provisions of articles 215, 226, 235 and 236.

Punishment in the form of deprivation of correspondence and visits does not apply to communication between detainees/prisoners, their counsel and members of the social services.

Incommunicado prisoners shall be permitted to walk alone for one hour in the prison yard, and shall have access to newspapers and books from the library.

All detainees shall have the right to lodge complaints as set out in articles 221 to 226."

"(h) Article 206: The punishments provided for in article 197, paragraphs 1 to 10, shall be imposed by the governor.

Punishments imposed on detainees and minors in Luxembourg prison in accordance with article 26 of the Youth Protection Act shall immediately be brought to the attention of the investigating judge, who has the power to modify them or order a temporary reprieve.

Punishments imposed on minors committed to either of the two facilities in accordance with article 6 of the Youth Protection Act shall immediately be brought to the attention of the competent children's judge, who has the power to modify them or order a temporary reprieve.

Punishments provided for in article 197, paragraphs 6-10, shall immediately be brought to the attention of the Principal State Counsel, who has the power to modify them or order a temporary reprieve.

Punishments provided for in article 197, paragraphs 11 and 12 shall be decided upon by the Principal State Counsel."

"(i) Article 228: The detainees and minors referred to in article 8, paragraph 2, may receive visits from anyone in possession of a visiting permit.

The permit displaying the name of the visitor shall be issued by the judicial officer entrusted with the preparation of the criminal case. When the judicial officer is taken off the case, the permit shall be issued by the representative of the State Counsel's Office attached to the court taking cognizance of the prosecution.

If the visitor does not belong to the category of persons listed in article 229, paragraph 1, he must also request prior authorization from the prison governor, who if necessary shall obtain prior advice from the social protection service.

Should the governor turn down the request, the detainee, minor or visitor can appeal the decision as provided for by article 212.

Unless specified otherwise, a visitor's permit is valid for one half-hour visit only as indicated on the permit."

"(j) Article 230: Prisoners and detainees placed in punishment cells shall be deprived of visits, with the exception of those provided for in articles 235 and 236, for the duration of the disciplinary measure."

"(k) Article 245, paragraph 1: Prisoners may be permitted to place outside telephone calls in accordance with arrangements to be determined by the prison governor."

"(l) Article 247, paragraph 1: Prisoners at the Givenich agricultural colony may be permitted to absent themselves temporarily from the institution during prescribed visiting hours specified by the Principal State Counsel.

Detainees benefiting from such arrangements shall be designated by the Principal State Counsel on the recommendation of the prison governor and the social protection service."

Act of 18 August 1995 amending the Act of 28 March 1972 on:

(1) The entry and residence of aliens;

(2) Medical examinations for aliens;

(3) The use of foreign labour;

(4) The text has been amended as follows:

"Article 14, paragraph 3: An alien shall not be expelled or deported to another country if he can establish that his life or freedom would thereby be seriously endangered, or that he would be treated in a manner contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

Constitutional amendment of 12 July 1996

5. The Constitutional Court has been established by article 95 ter of the Constitution, which is part of the chapter dealing with the judiciary. The Superior Court of Justice is the highest-ranking body in Luxembourg's system of ordinary courts. Since 1 January 1997, the highest court in the field of administrative and fiscal litigation has been the Administrative Court, in accordance with article 95 bis of the Constitution. The Constitution specifies that the sole function of the Constitutional Court is to oversee the constitutionality of legislation. Treaties and the acts by which they are ratified are expressly excluded from this definition.

"Article 95 ter (1): The Constitutional Court shall issue rulings in the form of judgements on the constitutionality of legislation.

(2) The Constitutional Court shall receive submissions from any court, on a preliminary basis and in accordance with arrangements to be specified by law, with a view to issuing a ruling on the constitutionality of legislation, with the exception of treaty ratification acts.

(3) The Constitutional Court shall be composed of the President of the Superior Court of Justice, the President of the Administrative Court, two judges from the Court of Cassation and five judicial officers appointed by the Grand Duke on the joint advice of the Superior Court of Justice and the Administrative Court. The provisions of articles 91, 92 and 93 shall apply to them. The Constitutional Court shall also have a division consisting of five judicial officers.

(4) The organization of the Constitutional Court and the manner in which it exercises its powers shall be specified by law."

Bill amending:

(a) Certain provisions of the Sale of Medicinal Substances and Drug Addiction Control Act (amended) of 19 February 1973;

(b) The Act of 17 March 1992:

1. Ratifying the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988;

2. Amending and updating the Sale of Medicinal Substances and Drug Addiction Control Act of 19 February 1973;

3. Amending and updating certain provisions of the Code of Pre-Trial Proceedings;

(c) The Insider Dealing Act of 3 May 1991; and

(d) The Act of 26 July 1986 on certain modes of enforcement of custodial sentences

6. A number of detainees are drug addicts. In order to avoid deaths from drug- or medicine-related overdoses, prevent drugs and medicines from entering prison and combat the spread of diseases such as AIDS or hepatitis in penal institutions, prison staff must be able to search detainees at any time in order to trace and locate drugs and medicines when there are strong indications that these substances are being used.

7. The proposed text amplifies article 4 of the Drugs Act and reproduces the terms originally provided for in article 1, paragraph 5, of the draft Grand Ducal regulation amending the Grand Ducal Regulation of 24 March 1989 on the internal administration and regulations of prisons.

8. In its opinion on this draft regulation, the Conseil d'État (national body advising the Government on legislation) considered that some of the powers which the draft had sought to confer on prison warders were not simply measures to maintain order, discipline and security at penal institutions or to protect the physical health of detainees; similar powers are vested in the criminal investigation service. In the latter institution, however, certain officials and representatives of the authorities and public services derive their powers from legislation.

9. The amended Drugs Act of 19 February 1973 is silent on the question of intervention by prison staff, but the final section of article 8 nevertheless makes provision for an aggravating circumstance when an offence is committed inside a prison.

10. The proposed textual amendments pertaining to solitary confinement applied as a disciplinary measure take account of the observations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, with special reference to the duration of the measure and the detainee's opportunity to lodge an appeal. The penal commission

provided for in article 12, paragraph 1, of the Custodial Sentences Enforcement Act of 26 July 1986 is responsible for examining appeals. This commission has the power to show leniency to prisoners serving sentences of more than two years; its members are well acquainted with the detainees' case files and are thoroughly qualified to decide on the matter of appeals. However, with the exception of a hypothetical appeal to the administrative courts, the regulations as they currently stand do not specifically refer to a detainee's right to appeal a decision to place him in solitary confinement.

11. The final paragraph of article 4 of the Sale of Medicinal Substances and Drug Addiction Control Act (amended) of 19 February 1973 has been amended as follows:

> "Such examinations and the taking of blood samples shall be carried out on the orders of the investigating judge, the State Counsel, officers of the gendarmerie, police force or customs authority, or persons appointed by the Ministry of Health (in accordance with article 2) who have established the fact, or by the representative of the Principal State Counsel in the prisons, the prison governor, the chief warder or the official deputizing for them. The procedures governing medical examinations and the taking of blood samples shall be specified by a public authority regulation with the advice of the Medical College. The questionnaires to be completed by the physician during these procedures shall be specified by ministerial regulation with the advice of the Medical College."

12. Regarding the introduction of a semi-custodial regime, it should be noted that the Act of 26 July 1986 on certain modes of enforcement of custodial sentences provides for the splitting up of custodial sentences of one year's duration or less. The intention is to preserve family and work ties intact.

13. The Act of 26 July 1986 on certain modes of enforcement of custodial sentences has been amended as follows:

> "Article 2-1 - If the professional or family situation of the prisoner so requires, and if his personality so warrants, the flexible custodial sentence may be served according to the semi-custodial system, whereby the prisoner must work at a penal institution during the day and return home outside working hours. The practical arrangements governing the semi-custodial system shall be specified by Grand Ducal Regulation."

14. The provisions proposed for the new section IV (1) of the Act of 26 July 1986 on certain modes of enforcement of custodial sentences reproduce the text originally contained in paragraph 11 of the draft Grand Ducal regulation amending the Grand Ducal Regulation of 24 March 1989 on the internal administration and regulations of prisons.

15. The Conseil d'État has issued an opinion stating that this draft Grand Ducal regulation is not the appropriate instrument for extending the powers of the penal commission, and that the Act of 26 July 1986 should be amended instead.

"Article 11-1 - When a detainee is placed in solitary confinement, either as a disciplinary measure or because he is known to be dangerous, the detainee concerned may lodge an appeal with the commission provided for in article 12, paragraph 1.

Neither the Principal State Counsel, nor his representative who took the contested decision, shall sit on the commission.

Should it deem necessary, the commission may undertake whatever investigative measures it considers to be helpful.

Notwithstanding the appeal, the decision shall be immediately enforceable.

The commission must rule on the matter within 15 days of the date on which the appeal was lodged by letter.

Rejection of an appeal must be substantiated."

Bill on

(1) The adaptation of domestic law to the provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, ratified by the Act of 31 July 1987;

(2) The transposition of certain recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(3) The amendment of certain provisions of the Criminal Code and the Code of Pre-Trial Proceedings;

(4) The amendment of the Foreign Criminals Extradition Act (amended) of 13 March 1870

16. The proposed article reproduces the definition of acts of torture given in article 1 of the United Nations Convention. Such acts need to be punished with greater severity because they constitute especially obnoxious conduct. Although acts of this kind are fortunately unknown in Luxembourg at the present time, they should nevertheless be criminalized in order to close a loophole in the country's legal system, since the punishments stipulated in the Criminal Code for assault and battery are not really commensurate with this type of conduct. The issue does not simply involve conventional physical torture but also mental torture, which is far more subtle and appears to be a characteristic of modern times.

17. Torture is a crime which can only be committed intentionally, since its purpose is either to bring about a certain result or to inflict punishment on a victim.

"Article 260-1 - Any public official in a position of authority, any public servant, or anyone acting at the instigation or with the express

or tacit consent of such an individual, who wilfully inflicts torture in such a manner as to cause pain or acute physical or mental suffering in order to extract information or confessions from an individual or third party; to inflict punishment for an act which an individual or third party has either committed or is suspected of having committed; to intimidate or put pressure on an individual or third party; or for any other reason based on any form of discrimination whatsoever, shall be punishable by imprisonment for 5 to 10 years.

Article 260-2 - If the torture inflicted has resulted in illness or incapacity for work, the penalty shall be imprisonment for 10 to 15 years.

Article 260-3 - If the torture inflicted has resulted in apparently incurable illness, permanent incapacity for work, complete loss of use of an organ, or severe mutilation, the penalty shall be imprisonment for 15 to 20 years.

Article 260-4 - If the torture inflicted has caused death albeit unintentionally, the penalty shall be life imprisonment."

18. The following articles of the Code of Pre-Trial Proceedings establish, in accordance with article 5, paragraph 1 (c) of the United Nations Convention and in the absence of relevant legal provisions in Luxembourg, a special jurisdiction enabling the Luxembourg courts to deal with hypothetical cases in which the victim is a citizen or a resident of the Grand Duchy. The Government hopes to ensure in the broadest terms that torture is prosecuted and punished in cases where, for example, the State in which the crime was committed does not criminalize this class of offence.

19. Since the ordinary law is not applicable to this jurisdiction, it has not been thought expedient to extend it to other offences or to turn it into a general principle, especially as it is always difficult to assemble sufficient evidence in respect of offences committed abroad.

"Article 7-1 - Anyone outside the territory of the Grand Duchy who has committed one of the offences provided for in articles 260-1 to 260-4 of the Criminal Code against a citizen or resident of Luxembourg can be prosecuted and tried in the Grand Duchy.

However, no proceedings shall be instituted against an accused person who has been tried for the same offence in a foreign country and acquitted.

The same shall apply if, having been tried and convicted, he has served his sentence, or the punishment has been time-barred, or he has been pardoned.

Any period of detention served abroad in consequence of the offence which gives rise to a conviction in the Grand Duchy shall be set against the period of any custodial sentence."

20. In accordance with article 3, paragraph 1, and article 5, paragraph 2, of the United Nations Convention, it has been necessary to institute a universal and active jurisdiction to ensure that criminals do not go unpunished as a result of non-extradition. This universal jurisdiction is limited to these very specific cases and cannot give rise to a general principle.

> "Article 7-4 - Anyone in a foreign country who has committed one of the offences provided for in articles 260-1 to 260-4 of the Criminal Code can be prosecuted and tried in the Grand Duchy when an application for extradition has been submitted but the person concerned has not been extradited."

21. The proposed amendments to articles 39 and 45 of the Code of Pre-Trial Proceedings are intended to give effect to a number of recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

22. A detainee is informed by law-enforcement officers of his right to communicate news of his arrest to an individual of his choosing.

23. To ensure that the detainee is able to communicate with a member of his family or another individual of his choosing, a telephone is placed at his disposal. To ensure that this right is not abused, only one telephone communication is permitted.

24. The present text of article 39 of the Code of Pre-Trial Proceedings gives State Counsel the power to order a medical examination.

25. If they consider it necessary, law-enforcement personnel may also summon a medical officer to examine a person being held in a detention cell.

26. The proposed amendment vests an independent right in a person detained by the gendarmerie or the police force so that, in any event, the detainee may himself ask to be examined by a medical officer.

27. To guard against the possibility that a detainee might not understand the language in which he is informed of his rights by law-enforcement officers, a pre-drafted explanatory note listing his rights and written in a language he understands is handed to him at the time of his arrest. The detainee signs the note and indicates the date and time he affixed his signature.

28. To ensure that these rights are put into practice, the proposed text makes it mandatory for officers of the criminal investigation service to inform the detainee of his rights in a language he understands and to include in the list of items which must appear on the written record of the interview (duly signed) a declaration by the detainee stating that he has been informed of his rights under article 39. It should also detail any urgent requirements of the investigation which might have resulted in a denial of one right conferred in paragraph 3 or a delay in exercising it.

"Article 39 (1) If the circumstances of the investigation so require, and with the permission of the State Counsel, an officer of the criminal investigation service may detain for a maximum of 24 hours persons against whom the evidence is sufficiently serious and compelling to warrant the bringing of charges.

(2) The 24-hour period shall begin from the moment of arrest by a police officer.

(3) Unless the circumstances of the investigation dictate otherwise, the detainee shall immediately be informed in writing and against a receipt, and in a language he understands, of his right to communicate with a person of his choosing. A telephone shall be provided for this purpose.

(4) The State Counsel may order the necessary identification procedures to be carried out, specifically the taking of fingerprints and photographs of the detainee.

(5) If the detainee is suspected of concealing evidence that might prove useful in ascertaining the truth or items that might be hazardous to himself or others, he may be subjected to a body search by a person of the same sex.

(6) At the time of his arrest, the detainee shall be informed in writing and against a receipt, and in a language he understands, of his right to be examined without delay by a medical officer. In addition, the State Counsel may at any time either as a matter of course or at the request of a member of the detainee's family, appoint a medical officer to carry out an examination.

(7) Before conducting an interview, the officers and representatives of the criminal investigation service specified in article 13 shall notify the interviewee, in a language he understands, of his right to have the assistance of a lawyer selected from lists I and II of the table of advocates.

(8) Written records of interviews of detainees shall indicate the date and time at which the individual was informed of his rights under paragraphs 3, 6 and 7 of this article, and, if applicable, the reasons for denying or delaying the exercise of the right conferred under paragraph 3, the duration of the interviews and the rest periods between them, and the date and time of arrest, release or appearance before the investigating judge."

29. A further proposed amendment seeks to bring article 45, paragraph 4, into line with article 39, paragraph 3, of the Code of Pre-Trial Proceedings regarding the suspect's right to communicate with a person of his choosing.

"Article 45 (4) - At the time of his arrest, the detainee shall be informed in writing and against a receipt, and in a language he understands, of his right to communicate with a person of his choosing. A telephone shall be provided for this purpose."

30. Another amendment aims to update the list of offences contained in the Act of 13 March 1870 for which the judge may order the extradition of a foreign criminal located in Luxembourg pursuant to a request from the foreign authorities.

31. It is not necessary to amend the extradition treaties concluded by Luxembourg on this point because the United Nations Convention implicitly amends the treaties concluded between its signatories.

32. The Foreign Criminals Extradition Act (amended) of 13 March 1870 has been updated as follows:

(a) "Article 1-31 - for offences covered by articles 260-1 to 260-4 of the Criminal Code."

(b) "Article 8-1 - No person shall be extradited where there are substantive grounds for believing that he would be in danger of being subjected to torture as defined in articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

II. INFORMATION OF A GENERAL NATURE REQUESTED BY THE COMMITTEE

A. Abolition of the death penalty

33. In reply to the views expressed by several members of the Committee during the presentation of the initial report regarding the advisability of eliminating all reference to the death penalty in legal provisions, it should be pointed out that the Act of 20 June 1979 "abolishes the death penalty for all crimes and replaces it with the penalty immediately below it in rank". Given that this is the only sure way to avoid an oversight when amending the various texts involved, this approach should be interpreted as a precaution. Furthermore, the reader is informed of the existence and content of this Act in a prefatory note to the Criminal Code.

34. On the international level, by the Act of 21 November 1984 the Government ratified Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, signed on 28 April 1983.

B. Abolition of hard labour

35. In order to avoid any confusion about the interpretation of hard labour as provided for under former article 7 of the Criminal Code, the Sentencing Regimes Act of 13 June 1994 stipulates that "in all legal or regulatory provisions, the terms 'hard labour' and 'detention' shall be replaced by the term 'imprisonment'".

C. Confinement of untried and convicted prisoners

36. The confinement of untried and convicted prisoners is governed by the Grand Ducal Regulation of 24 March 1989, subsequently amended by that of 18 March 1995.

37. Disciplinary sanctions. Breaches of laws, regulations and instructions, and acts of disobedience, indiscipline and insubordination, are punishable according to circumstances and the gravity of the offence. After examination of the case by the prison governor or his appointed representative, a punishment may be selected from a strictly defined list, as follows: (a) placement in a punishment cell for a maximum of 30 days; (b) placement in solitary confinement for a maximum of six months, or twelve months in the case of a repeat offence. Solitary confinement means that the detainee shall be confined alone 24 hours a day. This punishment may only be applied subsequent to an examination by a medical officer, who must certify in writing that the detainee is in a fit state to withstand the punishment. Solitary confinement entails deprivation of radio, canteen visits, leisure and communal activities, as well as discontinuation of correspondence with the outside world, cessation of visits (subject to the detainee's right to lodge an appeal or a complaint), and correspondence with his counsel or diplomatic representatives from an embassy if the detainee is a foreign national.

38. Solitary confinement. The following categories of detainee may be placed in solitary confinement following a decision by the Principal State Counsel: (a) detainees considered to be dangerous, after their views have been heard; (b) detainees subject to a disciplinary measure, once they have been notified in writing of the reasons for their placement in solitary confinement or the prolongation of this punishment. The detainee must be examined by a medical officer as a matter of course prior to the implementation of this punishment; a medical examination must also be conducted at least twice a week for the duration of the punishment. The arrangements for this regime are specified under instructions from the Principal State Counsel. In the implementation of this regime, detainees are kept segregated 24 hours a day. Contact is limited to prison staff and duly authorized visitors. The new Grand Ducal Regulation of 1995 stipulates that a detainee placed in solitary confinement, either for disciplinary reasons or because he is considered to be dangerous, may lodge an for appeal with the penal commission. The commission, which includes the representative of the Principal State Counsel who took the contested decision, may undertake all necessary inquiries and must rule on the matter within 15 days of the date of submission of the appeal. The rejection of the appeal must be substantiated.

39. Punishments imposed on a minor. Under article 38 of the Youth Protection Act of 10 August 1992, the punishment imposed on a minor who has been committed either to Luxembourg prison or to a re-education centre must immediately be reported to the investigating judge or the children's judge who has the power to modify the punishment or order a temporary reprieve. In order to ensure that the minor is protected to the maximum extent, only the Principal State Counsel can impose punishment on a minor who has been committee to Luxembourg prison.

D. System of judicial sentencing

40. The sentencing regime has been extensively modified by the Act of 13 June 1994, which is an integral part of the Criminal Code. The tripartite distinction between serious crimes, other major offences and minor offences continues to be defined by the length of the sentence prescribed in each case.

41. Penalties for serious crimes are as follows:

(a) Life imprisonment or imprisonment for a specified period of 5-10 years, 10-15 years, 15-20 years, and 20-30 years;

(b) A fine of at least Lux F 10,001;

(c) Special confiscation (mandatory in the case of custodial sentences);

(d) Dismissal from public appointments, grades, duties, functions and offices (mandatory in the case of custodial sentences);

(e) Deprivation of certain civil and political rights;

(f) Closure of enterprise and establishment;

(g) Publication or posting, at the convicted person's expense, of the text of the sentence either in full or in part;

(h) Disbarment from carrying out certain professional activities.

42. Penalties for other major offences, without prejudice to other penalties provided for under special laws, are as follows:

(a) Imprisonment for a term of between eight days to five years, except in cases where the law prescribes other limits;

(b) A fine of up to Lux F 10,001;

(c) Special confiscation;

(d) Deprivation of certain civil and political rights;

(e) Closure of enterprise and establishment;

(f) Publication or posting, at the convicted person's expense, of the text of the sentence either in full or in part;

(g) Disbarment from carrying out certain professional activities;

(h) Disqualification from operating certain motor vehicles;

(i) Alternative sentences as provided for in articles 21 and 22.

43. Penalties for minor offences are as follows:

(a) A fine ranging from Lux F 1,000 to 10,000, except when the law states otherwise;

(b) Special confiscation;

(c) Disqualification from operating certain motor vehicles.

44. Imprisonment has been abrogated in respect of minor offences by the Act referred to above.

45. For each major offence a primary penalty is specified. The judge is bound to impose a primary penalty, namely a custodial sentence or a fine.

46. Ancillary penalties are additional sanctions, some of which are mandatory and others dependent on the judge's discretion. Ancillary penalties under the Criminal Code are dismissal from appointments, deprivation of certain civil and political rights, special confiscation, and certain penalties provided for under special laws, for example closure of establishment, disqualification from piloting an aircraft, prohibition of hunting or fishing, demolition of a structure, and a ban on residing in certain areas.

47. The Act of 13 June 1994 establishes a third category, namely alternative penalties. If the court is of the opinion that the major offence does not warrant a custodial sentence exceeding six months, it may specify that, as a primary penalty, the convicted person must perform unpaid work of a general nature.

E. Status of judges

48. The personal status of judges is determined by the constitutional provisions regarding their appointment, irremovability, salary and incompatibilities with regard to their duties (articles 91-93 of the Constitution).

49. All judges are appointed by the Grand Duke, regardless of their rank in the judicial hierarchy. Stipendiary magistrates and court judges are appointed directly by the Grand Duke, whereas judges of the Superior Court of Justice and presidents and vice-presidents of district courts are appointed on the advice of the Superior Court of Justice.

50. Judges are irremovable, in other words they cannot be suspended or dismissed other than by a judicial decision. No judge may be transferred except by way of appointment and with his consent. By providing for the irremovability of stipendiary magistrates, the constitutional amendment of 20 April 1989 closes a final loophole. In the event of misconduct, pursuant to a submission by the Principal State Counsel, the Superior Court of Justice sitting in chambers may decide to suspend or dismiss a judge. Such a decision has the force of a judgement.

51. The Principal State Counsel is appointed by the Grand Duke at the suggestion of the Minister of Justice.

52. Because staff of the State Counsel's Office are the representatives of the executive in the courts, the constitutional provisions intended to reinforce the independence of judges do not apply to them. As an arm of the Government, and by virtue of the principle of the separation of powers, they are entirely independent of the courts in which they perform their duties.

53. In order to ensure that the Constitutional Court is able to deliver its judgements in complete independence, the constituent instrument of 1996 specified that the Court must be composed solely of professional, independent and irremovable judicial officers.

F. Police custody procedure (article 39 of the Code of Pre-Trial Proceedings)

54. When a person is apprehended in the very act of committing a crime or other major offence for which the law prescribes a custodial sentence, an officer of the criminal investigation service may detain the individual for a maximum of 24 hours when the evidence is sufficiently serious and compelling to warrant the bringing of charges and authorization has been obtained from the State Counsel. This period begins as soon as the individual has been arrested by a police officer. In the bill on police custody, the Government intends to strengthen substantially the rights of detainees in order to avoid any abuse of authority.

55. Moreover, under the Act of 18 December 1855, subsequently amended by the Act of 26 July 1986, any alien non-resident of the Grand Duchy who is charged with a major or minor offence punishable by a fine may be placed under temporary arrest and detained. The detainee shall be held in a remand prison on the strength of a committal warrant issued by the investigating judge. If the offence is a minor one, the detainee may be kept in a temporary holding facility in the administrative centre of the canton on the strength of an ordinance issued by the stipendiary magistrate.

56. Temporary arrest or detention is not required (a) if the alien can demonstrate that he owns a commercial establishment or property of sufficient value in the territory of Luxembourg; (b) if he deposits a sum of money to be determined by the reporting officers or, at the offender's request, either by the burgomaster or by the stipendiary magistrate or investigating judge, to cover the total amount of fines, confiscations and expenses; (c) if he can find a solvent Luxembourg resident willing to stand bail for him.

57. In the case of major offences, temporary arrest or detention must end if no summons to appear before a court has been served within 10 days, except when the warrant has been upheld and confirmed by judges in chambers on the basis of a report from the investigating judge. In the case of minor offences, it must end if no summons has been served within three days or judgement has not been passed within eight days. The investigating judge or stipendiary magistrate cancels the warrant or ordinance in the course of preparing the case for trial.

G. Pre-trial detention procedure (article 94 of the Code of Pre-Trial Proceedings)

58. Under the Code of Pre-Trial Proceedings, procedure differs according to whether the accused is resident or non-resident in the Grand Duchy.

59. Following the questioning of a detainee who is a resident of Luxembourg, the investigating judge may issue a committal warrant (a) if there is strong prima facie evidence against him; (b) if the charge carries with it a penalty for a serious crime or other major offence involving a maximum prison term of two years or longer, and (c) if there is a danger that the suspect might abscond (a lawful assumption since the charge is punishable by a penalty for a serious crime). A warrant may also be issued if there is a danger that evidence might be concealed or if there are grounds for believing that the suspect might abuse his freedom to commit further offences.

60. Following the questioning of a suspect who is not a resident of Luxembourg, a committal warrant may be issued if there is strong prima facie evidence against him or if the charge carries with it a penalty for a serious crime or a custodial sentence for another major offence.

61. Warrants must be specific to the facts of the case.

H. State security organs

62. In his capacity as the executive branch, the Grand Duke watches over the maintenance of public order and the protection of the internal and external security of the country. In order to facilitate the practical exercise of this right, article 37 of the Constitution confers on him the supreme command of the armed forces. The armed forces of Luxembourg comprise the army, the gendarmerie and the police. A bill to merge the gendarmerie and the police has been introduced and is currently being examined by Parliament.

I. Prison population

63. To enable members of the Committee to form a meaningful idea of the shifting size of the prison population, relevant statistics from recent years have been annexed to this report.

J. State Security Court

64. The Grand Duchy has three military courts, namely the Court Martial, the Military Court of Appeal, and the Military High Court.

65. Whereas courts martial have cognizance of breaches of the Criminal Code and the Military Court of Appeal has cognizance of appeals against judgements handed down by courts martial, the Military High Court has sole jurisdiction over serious crimes and other major offences against the security of the State (articles 113-123 of the Criminal Code); breaches of the Geneva Conventions of 12 August 1949 for the protection of the victims of war, ratified by the Act of 23 May 1953; acts of treason and sabotage provided for under the Military Criminal Code; and in wartime, serious crimes and other major offences against

the security of the State provided for under the Criminal Code. No allowance is made for the rank of persons who commit such crimes or those who aid and abet them.

66. Adjudicatory decisions of the Military High Court are not subject to appeal. However, such decisions may be subject to an application for review by way of cassation. The application is heard before a division of the court specially constituted for that purpose which comprises three judges who rule on the admissibility of the application on the basis of pleadings by the parties. The judgement is delivered at a public hearing. The applicant has no right of appeal if the application is dismissed. If it is allowed, the case is referred to the Court of Cassation for a ruling.

K. Habeas corpus

67. There is no equivalent of habeas corpus in Luxembourg. All arrests and detentions conform to the Code of Pre-Trial Proceedings.

L. State of emergency

68. In his capacity as the executive branch, the Grand Duke watches over and protects the internal and external security of the country. In order to enable him to perform this duty, article 37 of the Constitution confers on him the command of the armed forces. By virtue of this fact, and assisted in certain cases by the gendarmerie, the army is responsible for the external security of the country in wartime and its internal security in the event of rioting, unlawful assembly or serious interference with or threats to public order.

69. Military personnel are subject to the jurisdiction of courts martial for breaches of the law committed in the performance of their duties.

III. ADDITIONAL INFORMATION RELATING TO THE ARTICLES OF THE CONVENTION

A. Article 1

Definition of torture

70. The only kinds of torture formerly punishable in Luxembourg were acts committed by individuals against detainees (article 438 of the Criminal Code). However, this provision did not sufficiently punish custodians employed by a public authority who intentionally committed torture in the course of their duties.

71. Although such acts are fortunately unknown in Luxembourg at the present time, this legal loophole has now been closed. The issue involves not just conventional physical torture but also mental torture, which is far more subtle and appears to be a characteristic of modern times.

72. This issue is dealt with in articles 260-1 to 260-4 of the new Criminal Code.

Conclusion of international treaties

73. The Grand Duke negotiates and signs treaties through his diplomatic officers or specially mandated representatives. Since Parliament in the guise of the Chamber of Deputies does not form part of this process, the signature of treaties does not bind the State legally.

74. The Chamber of Deputies approves treaties by a majority vote. The Grand Duke's ratification takes the form of an approbatory formula affixed to a copy of the treaty which serves as a diplomatic instrument. The next stage is the exchange of instruments of ratification. This consists of the dispatch to each State party of an instrument which has been duly ratified by the other States parties and the depositing of the instruments with the designated State.

75. Although the treaty is legally binding from an international point of view, it must be promulgated and published in order to be domestically binding. Promulgation and publication are implemented by means of an Act ratifying the treaty.

76. Because the domestic implementation of treaties is akin to that of Acts by virtue of article 34 of the Constitution, a treaty and related amendments to domestic law must be published in the official journal of the State, the Mémorial.

Primacy of international treaties

77. The primacy of international treaties is ensured in two ways:

(a) The rule of interpretation: it must always be assumed that the legislator intended to comply with existing international commitments. Therefore, domestic law is always interpreted in such a way as to align it with treaty obligations;

(b) The rule of hierarchy: a treaty prevails over a domestic law, even retroactively, because the source of the treaty is higher than the will of a domestic body.

Conflicts between domestic provisions and an international convention

78. The solution to a conflict of this nature differs according to whether the domestic provision is an administrative act or a statute. According to article 95 of the Constitution, a regulatory act which is contrary to a treaty can only be applied by the courts. If the domestic provision is a statute, it should be determined whether it antedates or postdates the treaty. A treaty which postdates a statute overrides it. When a statute postdates a treaty and is incompatible with it, the international treaty takes precedence over the domestic statute, even though it postdates the treaty. When two statutes are of unequal value, the treaty takes precedence over the will of a domestic body by virtue of its inherent superiority.

79. With reference to European community law, the Conseil d'État has adopted the principle of the pre-eminence of treaties, as well as that of the autonomous nature of community law.

Supervision of the constitutionality of legislation

80. A Constitutional Court entrusted with supervising the constitutionality of legislation passed by Parliament has been established by the constitutional amendment of 12 July 1996 (article 95 ter of the Constitution). The Constitutional Court is part of the judiciary, as are the ordinary courts and the new administrative courts.

81. In accordance with the Constitution and to the extent that the Constitutional Court is an independent court occupying the highest rank in the hierarchy of courts, the Grand Duke, as Head of State, must appoint its members.

82. According to the Constitution, the sole function of the Constitutional Court is to supervise the constitutionality of legislation. Treaties and their ratifying acts are expressly excluded from this requirement.

83. The Conseil d'État, which gives an opinion on all bills, exercises an a priori political monitoring function on the constitutionality of legislation.

84. When a party raises the issue of whether a particular statute is constitutional in the courts, the court involved is under an obligation to refer the matter to the Constitutional Court. Courts are exempt from referring the matter to the Constitutional Court in three cases: when the court does not need to take a decision on the issue of constitutionality in order to render its judgement; when the issue of constitutionality is specious; and when the Constitutional Court has already issued a ruling on a similar matter.

85. If the Constitutional Court decides that the provision which has been referred to it is constitutional, there are no consequences for the referring judge or the legislator. On the other hand, if the statute is found to be unconstitutional, the legislature must study the Court's judgement with a view to amending the law in order to make it constitutional, or amending the Constitution if the necessary preconditions obtain.

86. To ensure that the Constitutional Court is able to deliver its judgements in complete independence, the 1996 constituent instrument established that the Court must be composed solely of professional, independent and irremovable judicial officers.

B. Article 2

87. Given the lack of legal provisions in this matter, a special jurisdiction of Luxembourg's courts has been established with a view to dealing with cases in which the victim is a national or a resident of Luxembourg. This jurisdiction will ensure in the broadest terms that torture

is punished and prosecuted in cases where, for example, the State in which the offence was committed does not criminalize this class of offence.

88. Since the ordinary law is not applicable to this jurisdiction, it has not been thought expedient to extend it to other offences or to turn it into a general principle, especially as it is always difficult to assemble sufficient evidence in the case of offences committed abroad.

89. Moreover, it has been necessary to institute a universal and active jurisdiction to ensure that criminals do not go unpunished as a result of non-extradition.

C. Article 3

Extradition procedure

90. In matters of extradition, it is important to distinguish two possible situations, namely extradition between States bound by a bilateral or multilateral convention and extradition between States not bound by a convention. In the latter case, the Foreign Criminals Extradition Act (amended) of 13 March 1870 permits the Government to hand over to foreign governments, on a reciprocal basis, any alien in pre-trial detention, charged with an offence, or convicted in the courts of the two countries of an a offence according to law.

91. As a result of the concerns expressed by the Committee, the offences listed in the law of 13 March 1870 for which a judge may order the extradition of a foreign criminal in Luxembourg to requesting foreign authorities have been amplified in the bill referred to above.

92. Extradition may only proceed upon presentation of the court judgement, the ordinance of judges in chambers, the judgement of the relevant division of the Court of Appeal or the criminal procedural act issued by a competent judge after hearing the advice of the Superior Court of Justice sitting in chambers. The State Counsel's Office and the alien, who may be represented by a lawyer, plead their respective cases at the public hearing.

93. Within 15 days of the submission of all papers and documents, these are referred to the Minister of Justice together with the substantiated opinion of the relevant division of the Court of Appeal. The Minister then issues a ruling on the request for extradition in line with a decision of the Government meeting in council.

94. Extradition by way of transit across Luxembourg may be authorized without seeking the opinion of the relevant division of the Court of Appeal when the requesting and requested State are bound to Luxembourg by a treaty that covers the offence giving rise to the request for extradition. Extradition may not proceed if, since the date of the alleged offence, prosecution or sentence, the offence or the penalty for it has been extinguished under Luxembourg law. Through the legislative amendment referred to above, extradition may not proceed if there are substantial grounds for

believing that the person facing extradition would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Expulsion

95. In accordance with the Act of 28 March 1972 (amended) on (1) the entry and residence of aliens; (2) medical examinations for aliens; (3) the use of foreign labour, and specifically article 12 thereof, the law-enforcement services may expel the following categories of aliens unauthorized to reside in the territory of Luxembourg simply by stating the fact in an official report addressed to the Ministry of Justice:

(a) Vagrants, beggars and persons contravening regulations on peddling;

(b) Persons lacking adequate financial means to pay their travel and accommodation costs;

(c) Persons refused entry to the country under article 2 of the Act;

(d) Persons without proper identity papers or a visa, if one is required;

(e) In the cases provided for under article 2, paragraph 2, of the implementing Convention of the Schengen Agreement, persons found to be in breach of the Arms and Munitions Act (amended) of 15 March 1983 or persons likely to compromise public security, peace and order.

96. The following categories of aliens may be expelled from Luxembourg even when extradition has not been requested: (a) aliens who have been denied a foreign identity card, or whose identity card has been cancelled; (b) aliens who prolong their stay in the country after being duly warned that entry, residence or settlement in Luxembourg has been denied, or after being notified of a decision not to renew or to cancel their identity card; (c) aliens who re-enter the country within two years of being expelled or escorted to the border, in accordance either with article 12 of the Act or with article 346 or article 563, paragraph 6, of the Criminal Code. The decision to expel an alien is taken by the Minister of Justice and published through administrative channels.

97. When expulsion or refoulement is impossible owing to circumstances, and the Minister of Justice so decides, the alien may be committed to an appropriate establishment for a period of one month, renewable on two occasions. When the matter cannot be referred to the Minister of Justice immediately, the alien may be held with the authorization of the State Counsel for a maximum of 48 hours from the moment the authorization is issued. This form of detention, which must be detailed in an official report prepared by an officer of the criminal investigation service, should specify the circumstances, date and time of the State Counsel's authorization, a statement by the detainee that he has been informed of his rights, and the date and time of release or notification of the Minister of Justice's decision on committal. The official report is transmitted to the State Counsel and copies are sent to

the Minister of Justice and the detained alien. The detained alien is entitled to have the free assistance of an interpreter in order to protect his interests.

98. The alien is immediately informed of his right to communicate with his family or a person of his choosing. A telephone is made available for this purpose.

99. The alien is immediately informed of his right to be examined by a medical officer, to choose a lawyer or to have a lawyer appointed for him by the chairman of the Luxembourg bar.

100. Fingerprints and photographs may not be taken unless it is absolutely essential to establish the identity of the detained alien.

101. Notification of a committal decision must be included in a written report prepared by the officer of the criminal investigation service conducting the inquiry. This report must mention, inter alia, the date of notification of the decision, the detainee's statement that he has been informed of his rights and any other statements he wishes to make, and the language in which his statements have been made. The report is presented to the detainee for signature. If he refuses to sign, the fact is noted and the reason recorded.

102. Committal decisions may be appealed to the Administrative Court.

103. An alien may not be expelled or deported to another country if he can establish that his life or freedom would be seriously endangered or he would be treated in a manner contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms or articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

D. Article 9

Mutual judicial assistance (not governed by an international convention)

104. In relations with countries which are not signatories to an international convention, international letters rogatory are covered by article 59 of the Judicial Organization Act (amended) of 7 March 1980:

> "With the exception of provisions arising from international treaties, judges shall not accede to a letter rogatory originating from foreign judges unless authorized to do so by the Minister of Justice, in which case they are under an obligation to pursue the matter."

105. The main purpose of the bill on mutual judicial assistance which has been placed before Parliament is to establish a system for supervision and remedies in respect of requests for mutual judicial assistance in criminal matters. This system is partially based on the practice currently followed in respect of domestic pre-trial remedies. The provisions on remedies aim to simplify and expedite procedures, while at the same time eliminating abuses and delaying manoeuvres.

Letter rogatory

106. The current system regarding the execution of international letters rogatory and the relevant judicial remedies are as follows: If the requesting State is bound to Luxembourg by an international agreement, the reference texts applicable to the actual execution of letters rogatory addressed to the Grand Duchy of Luxembourg are article 3, paragraph 1, of the European Convention on Mutual Assistance in Criminal Matters and article 44 of the Benelux Treaty:

(a) In accordance with article 3, paragraph 1, of the European Convention on Mutual Assistance, "the requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.";

(b) Article 44 of the Benelux Treaty states that "except as provided for otherwise by this Treaty, the law of the requested Party is solely applicable ... to the execution of requests for mutual judicial assistance."

Settled judicial practice, based on the texts referred to above, assumes that, unless specified otherwise by a treaty provision, Luxembourg law is applicable in respect of the execution of requests for mutual judicial assistance, and also in respect of any appeal proceedings against the implementation of such requests. It follows that international letters rogatory are executed by the judicial authorities in Luxembourg, specifically by the investigating judge in accordance with the procedures applicable under Luxembourg law, which are mainly to be found in the Code of Pre-Trial Proceedings. The same applies to the judicial remedies which are admissible in the matter. In the absence of a specific text regulating these remedies, they are borrowed from articles 126 (invalidity) and 68 (restitution) of the Code of Pre-Trial Proceedings.

107. The judicial remedies applicable in respect of letters rogatory originating from a State not bound to Luxembourg by an international agreement are as follows:

(a) Remedy of annulment, based on article 126 of the Code of Pre-Trial Proceedings;

(b) Application for restitution of confiscated items, based on article 68 of the Code of Pre-Trial Proceedings.

Settled judicial practice imposes the same limitations on the remedy of annulment and the application for restitution as those described above in respect of requests originating from a State bound to Luxembourg by an international agreement.

E. Article 10

Training in public administration

108. Since its establishment in 1984, the Administrative Training Institute has organized courses entitled "Protection of the Citizen" for senior and middle-ranking civil servants. Among other things, these courses provide an introduction to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Training in the prison administration

109. Courses on torture awareness are organized for prison warders in the context of ongoing training efforts.

Training in the law-enforcement services

110. Before entering service (human rights course) and during their ongoing training (course focusing on torture), officers of the law-enforcement services are provided with a basic grounding in the subject.

F. Articles 12 and 13

Prison discipline

111. Internal security at prisons is the responsibility of prison staff. However, when prison staff alone are unable to restore and maintain order and security owing to the seriousness or scale of an incident which has occurred or is likely to occur inside a prison, the governor or a person acting on his behalf must request the assistance of the chief of the gendarmerie and immediately notify the Principal State Counsel of this request. The same measures must be taken in the event of an attack or threat from outside the prison.

112. The prison administration provides warders with weapons in circumstances and in accordance with procedures which it deems appropriate. Warders are not authorized to carry any weapon inside prison buildings, unless permitted to do so by the governor in circumstances which justify this measure and for a strictly defined purpose. Warders engaged in surveillance duties outside prison buildings may be armed in accordance with the provisions laid down in the service instructions. In any event, firearms may only be used in self-defence.

113. In accordance with the amended Grand Ducal Regulation of 24 March 1989 on the internal administration and regulations of prisons, the governor (with the authority of the Principal State Counsel) is responsible for administering the institution of which he is the chief. He must see to it that the instructions relating to the maintenance of order and security at the institution under his control are rigorously applied.

114. Breaches of laws, regulations and instructions, and acts of disobedience, indiscipline and insubordination, are punishable according to

circumstances and the gravity of the offence. No detainee may be punished without being informed of the offence or fault of which he is accused and without being given the opportunity to present his defence. The governor or his appointed representative must undertake a comprehensive examination of the case.

Discipline in the law-enforcement services

115. In accordance with the Law-Enforcement Services Discipline Act of 16 April 1979, all commanding officers are obliged to set an example in their behaviour and the performance of their duties. They are responsible for supervising the duties and discipline of their subordinates.

116. Subordination means the dependence of the subordinate officer on his superior, to whom he owes respect and obedience. Exceptionally, in the absence of a superior officer, a member of the law-enforcement services may assume the right to give an order to other law-enforcement officers provided they are not superior to him in rank, for example to maintain discipline or security.

117. Disciplinary authority is bound to rank and cannot be delegated separately from it.

118. Disciplinary proceedings are a matter for the ranking competent military commander and the disciplinary board. The board may, either of its own accord or at the request of the accused, order additional investigations to be carried out with a view to establishing the facts. The board's hearings are not public.

119. Military punishments are imposed by courts martial by way of a substantiated decision after the accused military officer has pleaded his case. Such decisions may be appealed.

G. Article 15

120. The truth, which is the objective of a criminal trial, cannot be established by absolutely any means. It is a matter of principle that judges may not consider evidence obtained by wrongful or unfair means (Court decision of 26 June 1972 (Pasicrisie 22. 216)).

H. Article 16

Prisons

121. The organization of prisons is governed by the Act of 27 July 1997.

122. Two prisons are designed for the enforcement of custodial sentences imposed by punitive courts and the implementation of measures of detention prescribed by law. In Luxembourg prison, (a) only essential administrative relations exist between persons in the "male" and "female" sections of the institution; (b) in accordance with the Youth Protection Act of 10 August 1992, minors committed to the prison are held in solitary confinement; (c) minors are physically segregated from older prisoners and

attend an educational facility within the prison. Luxembourg prison is the only closed institution with the facilities to handle juvenile delinquents; (d) there are plans to build a new closed prison exclusively for minors at Dreiborn, away from Luxembourg prison.

The Givenich detention centre is an open prison with a semi-custodial regime.

Treatment of detainees

123. The treatment of detainees is governed by the Grand Ducal Regulation of 24 March 1989 (amended). This regulation deals with committal, release, escorted transfers to outside institutions, internal discipline, punishments, rewards, applications for remedies, contacts with the outside (correspondence, visits), maintenance (food, medical treatment), work, savings, and the opportunity to receive general or vocational training.

Annex*

LIST OF DOCUMENTS REFERRED TO

(1) Constitution of 17 October 1868 (amended)

(2) Extracts from the Criminal Code

(3) Extracts from the Code of Pre-Trial Proceedings

(4) Foreign Criminals Extradition Act (amended) of 13 March 1870

(5) Extracts from the Act of 28 March 1972 on:

1. The entry and residence of aliens;

2. Medical examinations for aliens;

3. The use of foreign labour

(6) Law-Enforcement Services Discipline Act of 16 April 1979

(7) Code of Military Procedure Revision Act of 31 December 1982

(8) Act of 26 July 1986 on certain modes of enforcement of custodial sentences

(9) Grand Ducal Regulations of 24 March 1989 and 18 March 1995 on the internal administration and regulations of prisons

(10) Youth Protection Act of 10 August 1992

(11) Sentencing Regimes Act of 13 June 1994

(12) Administrative Organization of the Courts Act of 7 November 1996

(13) Reorganization of the Prison Administration Act of 27 July 1997

(14) Organization of the Constitutional Court Act of 27 July 1997

(15) Bill on mutual judicial assistance in criminal matters

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* The annexes may be consulted in the archives of the Office of the High Commissioner for Human Rights once they have been received from the Government of Luxembourg.

(16) Bill on amending:

(a) Certain provisions of the Sale of Medicinal Substances and Drug Addiction Control Act (amended) of 19 February 1973;

(b) The Act of 17 March 1992:

1. Ratifying the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988;

2. Amending and updating the Sale of Medicinal Substances and Drug Addiction Control Act of 19 February 1973;

3. Amending and updating certain provisions of the Code of Pre-Trial Proceedings;

(c) The Insider Dealing Act of 3 May 1991; and

(d) The Act of 26 July 1986 on certain modes of enforcement of custodial sentences

(17) Bill on amending:

1. The adaptation of domestic law to the provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Act of 31 July 1987;

2. The transposition of certain recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, amending certain provisions of the Criminal Code and the Code of Pre-Trial Proceedings;

3. The amendment of the Foreign Criminals Extradition Act (amended) of 13 March 1870